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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. | | |
|--|-------------|----------------------|---------------------|------------------|--|--|
| 10/014,727 | 12/10/2001 | David Hedman | 871870-6 | 6900 | | |
| 23879 | 7590 | 06/20/2008 | EXAMINER | | | |
| O'Melveny & Myers LLP IP&T Calendar Department LA-1118 400 South Hope Street Los Angeles, CA 90071-2899 | | | | ROWAN, KURT C | | |
| ART UNIT | | PAPER NUMBER | | | | |
| 3643 | | | | | | |
| MAIL DATE | | DELIVERY MODE | | | | |
| 06/20/2008 | | PAPER | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/014,727 | HEDMAN ET AL. | |
| | Examiner | Art Unit | |
| | Kurt Rowan | 3643 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 18-23, 26-30, 36-40 and 42-55 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 18-23, 26-30, 36-40, 42-55 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ . | 6) <input type="checkbox"/> Other: ____ . |

DETAILED ACTION

1. In view of the new claims filed on 2/28/2007 PROSECUTION IS HEREBY REOPENED. The rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Michael J. Carone/

Supervisory Patent Examiner,

Art Unit 3641

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 18, 19, 20, 21, 22, 23, 26-30, 36-40, and 42-43, 44-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes '329 in view of Brenner et al. (US 5806238) for substantially the same reasons stated in the last Office Action.

The patents to Forbes and Brenner show insect destroying methods and Forbes has been discussed in the first Office Action. In reference to claims 18, 20, and 26, Forbes shows most of the method steps recited such as providing an ingress duct 51, heating a gas by burner 25 to a temperature lethal to a predetermined species as disclosed by Forbes in column 4, lines 22-63. Forbes shows directing the heated gas into the enclosure in Fig. 1 using ingress duct 41. Forbes shows extracting or exhausting heated gas in column 4, lines 8-12. However, Forbes does not disclose filtering the heated gas from the enclosure for extracting heat killed organisms before the heated gas is released to an external environment. The patent to Brenner shows using heat and a vacuum to destroy insects. Brenner who discloses a filter system 84 with four filters 86 and a HEPA filter 108. In reference to claims 18, 20, 26, it would have been obvious to provide Forbes with an extraction step as shown by Brenner who filters the outflow for the purpose of removing dead organisms before the outflow is released to an external environment. In reference to claims 19, 22, and 30, Brenner discloses a HEPA filter. It would have obvious to provide Forbes with a HEPA filter as shown by Brenner to remove fine particulate from the heated gas. In reference to claims 21, 27, Forbes discloses 120 degrees F in column 4, lines 31-40. In reference to claim 36, Forbes discloses venting through a ventilation duct in column 3, lines 16-17. In reference to claim 37, it would have been obvious to provide the method of Forbes as modified by Brenner with a filter system 84 as disclosed by Brenner to trap organisms killed

during the operation of the method recited. In reference to claim 38, it would have been obvious to return filtered air to the interior since Forbes discloses recalculating air in column 2, lines 50-53. In reference to claim 39, Brenner discloses using suction to pull air from an enclosure and it follows that the filter be placed before the suction to ensure proper operation as shown by Brenner. Hence, it would have been obvious to provide the method of killing organisms as shown by Forbes with suction downstream of the filter as shown by Brenner to collect organisms and insects including insect particles in the filter. In reference to claim 40, Forbes discloses heating outside the enclosed structure in Figure 1 noting burner 25. In reference to claim 42, Forbes shows directing heated gas into the interior portion using a duct 51. In reference to claim 43, Forbes discloses heating for about one hour in column 4, line 54. In reference to claims 44, 48, and 49, Forbes discloses covering sections of the structure with thermal insulation material 20, 58. In reference to claims 45-47, and 50-52, Forbes monitors temperature but does not disclose if the temperature is monitored from outside the structure and the temperature signal is sent wirelessly to a console located outside the enclosure. It would have been obvious to monitor the temperature from outside the structure to prevent overheating the treatment operators. In reference to claim 53, Forbes monitors temperature from inside the structure noting column 4, lines 31-45. In reference to claim 54, Forbes discloses at least one temperature probe within the structure. In reference to claim 55, it is not clear how Forbes communicates the temperature, but clearly uses a temperature sensitive probe. However, it would have been obvious to communicate the temperature to a console outside of the structure to preclude an operator from having to remain inside the structure and also to prevent an operator from having to go in and out of the structure which would release heat to the outside.

4. Claims 18, 20, 21, 23, 26-29, 36-40, 42-43, 44-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes in view of Montellano for substantially the same reasons as stated in the last Office Action.

The patents to Forbes and Montellano show insect and pest destroying devices and have been discussed in the last Office Action. It would have been obvious in reference to claims 18, 20, 21, 23, 26-29, 36-40, and 42-43 to provide Forbes with a filter screen as shown by Montellano for the purpose of collecting dead insects to assess the effectiveness of the system. In reference to claims 44-55, see the rejection of these claims, above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kurt Rowan
Primary Examiner
Art Unit 3643

KR
/Kurt Rowan/
Primary Examiner, Art Unit 3643